

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT ARKANSAS
FAYETTEVILLE DIVISION**

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JILL DILLARD, JESSA SEEWALD, JINGER
VUOLO, and JOY DUGGAR,

Plaintiffs,

- against -

CITY OF SPRINGDALE, ARKANSAS;
WASHINGTON COUNTY, ARKANSAS;
KATHY O’KELLEY, in her individual and
official capacities; ERNEST CATE, in his
individual and official capacities; RICK HOYT,
in his individual and official capacities; STEVE
ZEGA, in his official capacity; BAUER
PUBLISHING COMPANY, L.P.; BAUER
MAGAZINE, L.P.; BAUER MEDIA GROUP,
INC.; BAUER, INC.; HEINRICH BAUER
NORTH AMERICA, INC.; BAUER MEDIA
GROUP USA, LLC; and DOES 1-10, inclusive,

Defendants.
----- X

Civil Action No.: 17 Civ. 5089 (TLB)

**NOTICE OF MOTION BY DEFENDANTS BAUER PUBLISHING COMPANY, L.P.;
BAUER MAGAZINE, L.P.; BAUER MEDIA SALES, INC.; BAUER, INC.; HEINRICH
BAUER NORTH AMERICA, INC.; AND BAUER MEDIA GROUP USA, LLC TO
DISMISS PLAINTIFFS’ COMPLAINT**

Defendants, Bauer Publishing Company, L.P.; Bauer Magazine, L.P.; Bauer Media Sales, Inc., formerly known as Bauer Media Group, Inc.; Bauer, Inc.; Heinrich Bauer North America, Inc.; and Bauer Media Group USA, LLC (collectively, the “Bauer Defendants”) by their attorneys, Davis Wright Tremaine LLP and Cross, Gunter, Witherspoon & Galchus, P.C., and for their Motion to Dismiss, state:

1. Plaintiffs filed an action in this Court on May 18, 2017 against, among others, the Bauer Defendants alleging four causes of action: (1) invasion of privacy – public disclosure of private

fact; (2) invasion of privacy – appropriation; (3) invasion of privacy – intrusion upon seclusion; and (4) tort of outrage.

2. The Bauer Defendants move to dismiss all of Plaintiffs’ claims, as against them, in their entirety as a matter of law pursuant to Fed. R. Civ. P. 12(b)(6) or, alternatively, pursuant to Section 506 of the Arkansas Citizen Participation in Government Act, Ark. Code Ann. §§ 16-63-501 *et seq.* (the “Anti-SLAPP statute”).

3. Plaintiffs’ claims against the Bauer Defendants should be dismissed because the claims are barred by the First Amendment, notwithstanding whether the other defendants acted properly in disclosing the police reports at issue.

4. Plaintiffs’ claims against the Bauer Defendants for invasion of privacy – public disclosure of private fact, appropriation, and intrusion upon seclusion, and claim for the tort of outrage should be dismissed as Plaintiffs fail to plausibly plead critical elements for each of the alleged claims and therefore, cannot state a claim upon which relief can be granted.

5. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs have failed to state a claim upon which relief can be granted, and therefore the Complaint should be dismissed.

6. Pursuant to the Anti-SLAPP statute, Plaintiffs have failed to verify their claims and any verification would be in violation of Section 505, and therefore the Complaint should be dismissed.

7. The Bauer Defendants have filed a Brief in Support of this Motion to Dismiss.

WHEREFORE, the Bauer Defendants pray that this Court dismiss Plaintiffs’ Complaint against the Bauer Defendants in its entirety, with prejudice, as a matter of law pursuant to Fed. R.

Civ. P. 12(b)(6) or the Anti-SLAPP statute, for its attorneys' fees and costs, and any and all other relief this Court deems proper.

Dated: New York, New York
August 22, 2017

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

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Bauer, Inc.; Heinrich Bauer North America, Inc.; and
Bauer Media Group USA, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

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